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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/852,313	05/09/2001	Larry Harris	41872-249694	4713

7590 11/22/2005  
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EXAMINER

COLE, ELIZABETH M

ART UNIT PAPER NUMBER

1771

DATE MAILED: 11/22/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

09/852,313

Applicant(s)

HARRIS ET AL.

Examiner

Elizabeth M. Cole

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**– The MAILING DATE of this communication appears on the cover sheet with the correspondence address –**  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-76 is/are pending in the application.
- 4a) Of the above claim(s), 1-43, 48, 50, 51, 56, 58, 64, 66, 67, 75 and 76 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 44-47, 49, 52-55, 57, 59-63, 65, 68-74 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. ____. |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date <u>5/21/01</u> | 6) <input type="checkbox"/> Other: ____.  |

1. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.
2. Newly submitted claims 75-76 are drawn to the non-elected species are therefore withdrawn from consideration.
3. Claims 68-74 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. In claim 68, the specification does not provide support for the limitation that the microcapsules are dispersed with a dispersant about the textile material in a binder-free environment. Specifically, while the original disclosure provides support for first dispersing the microcapsules and applying them to the textile, it does not provide support for a "binder-free environment".
4. Claims 68-76 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. In claim 68, the claim recites that the microcapsules are dispersed about the textile material in a binder-free environment and that the dispersed microcapsules are adhered to the textile material with a binder. It is not clear how the environment can be binder-free when the claim recites adhering the microcapsules with a binder. It appears that claim 68 may be attempting to claim process steps but this is not clear from the claim as written. Also, it is not clear what exactly is being claimed, the state when the microcapsules are dispersed in the

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dispersant but before they are bonded, or the finished product. For purposes of the art rejection, it will be assumed that the textile with the microcapsules bonded to it with a binder is being claimed.

5. Claims 44-45, 2-53,60-61, 68-72 are rejected under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over EP 581,274 to Kamata et al. Kamata et al disclose a textile material which may be formed into a garment and which is placed in a bath with microcapsules which contain a fragrance. The microcapsules are taken up by the fabric. See page 7, line 51 – page 8, line 9. After the microcapsules are taken up by the fabric a binder can then be added to the treating liquid. See page 8, lines 45-50. With regard to the particular process steps claimed, while Kamata does not identically disclose the claimed process, since Kamata does teach first forming the dispersion of microcapsules, then treating the textile product with the dispersion and then applying a binder, it is reasonable to presume that the Kamata textile is the same as the claimed fabric. It is noted that the previous action had stated that Kamata does not teach the use of binders to apply the microcapsules. With regard to the binder, Kamata teaches that the binder can be acrylic. See page 8, lines 15-41. However, a closer reading of Kamata shows that the reference does teach this step at page 8, lines 45-50. The error in the previous action is regretted.

6. Claims 46-47, 49, 54-55, 57, 62-63,65,73-74 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kamata et al, EP 581,274 in view of EP 436,729 to Yamato et al. Kamata et al teaches a treated fabric as set forth above. Kamata et al differs from the claimed invention because Kamata does not disclose applying a moisturizing

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agent in the microcapsules and does not disclose that the textile is formed into hosiery. Yamato teaches that microcapsules which are applied to a fabric such as a garment may further comprise moisturizers and other skin conditioning agents in addition to fragrant components. Yamato further teaches that suitable garments to which such microcapsules could be applied include hosiery. See p. 6, lines 3-31, p. 4, lines 5-10 and page 5, lines 13-18. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to have incorporated a moisturizer, (i.e., a humidity preserving agent), in addition to a fragrance in the microcapsules of Kamata, motivated by the expectation that this would further enhance the fabric of Kamata by making it moisturizing in addition to being fragrant. One of ordinary skill in the art would have been motivated to apply the microcapsules to hosiery because Yamato teaches that since Hosiery is in direct contact with skin, the fragrant, moisturizing microcapsules would be most effective.

7. The Declaration under 37 CFR 1.132 filed 12/2/04 is insufficient to overcome the rejection of claims 44-46, 49, 55, 57, 60-63, 65 based upon over EP 581,274 to Kamata et al in view of EP 436,729 to Yamato as set forth in the last Office action because: the showing fails to set forth a sufficient number of tests and fails to show that the difference between the samples tested is significantly significant and consistent from test to test. Also, the amounts of the various components is not specified and it is not shown that the differences would be consistent regardless of relative amounts, material used, etc. Further, it is noted that as set forth above, Kamata does teach the process of

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first dispersing the microcapsules, then applying the microcapsules to the fabric and then adding a binder. Therefore, the rejection is maintained.

8. Applicant's arguments filed 9/7/05 have been fully considered but they are not persuasive. Applicant's comments regarding the Declaration have been fully considered. However, as set forth above, on closer consideration, it is noted that Kamata does teach the claimed product in that Kamata does teach dispersing the microcapsules, applying the microcapsules to the fabric, and then applying a binder to the fabric. Therefore, the Declaration cannot overcome Kamata since Kamata teaches the claimed invention.

9. Since the grounds of rejection have been modified, this action is non-final.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Elizabeth M. Cole whose telephone number is (571) 272-1475. The examiner may be reached between 6:30 AM and 6:00 PM Monday through Wednesday, and 6:30 AM and 2 PM on Thursday.

Mr. Terrel Morris, the examiner's supervisor, may be reached at (571) 272-1478.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

The fax number for all official faxes is (571) 273-8300.



Elizabeth M. Cole  
Primary Examiner  
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